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INDIANA
SECRETARY OF STATE

**INDIANA SECRETARY OF STATE
SECURITIES DIVISION**

**STATEMENT OF POLICY REGARDING
CLARIFICATION OF REIMBURSEMENT UNDER
THE SECURITIES RESTITUTION FUND**

The Indiana Secretary of State and the Securities Commissioner ("Commissioner") have determined that it is appropriate and in the public interest to issue a Statement of Policy clarifying the Securities Division's position on awarding restitution under the Securities Restitution Fund (Ind. Code 23-20-1), established in House Enrolled Act 1332 (P.L. 114-2010).

Background

The Securities Restitution Fund ("Fund") was created by the Indiana General Assembly to provide restitution for victims of securities violations. The Fund is officially established on July 1, 2010. The Securities Division can only make a payment to victims if a state court, federal court, or administrative agency has ordered restitution to be paid to that victim as a result of a securities violation. A copy of the Final Order showing that restitution has been awarded will be required as part of the application. FINRA arbitration awards are not eligible for payment from the fund. Restitution will be paid out of civil penalties imposed by the Securities Division against those who have violated the Indiana Uniform Securities Act. Payment to each victim will be capped at twenty-five percent (25%) or fifteen thousand dollars (\$15,000), whichever amount is less. The intent of the Indiana General Assembly appears to be creating a Fund that would provide compensation for losses that are the result of securities violations.

Strict application of this formula for determining the amount to be paid from the Fund could lead to payments to victims in amounts in excess of the actual awards. To demonstrate, if an Order of Restitution provided that a victim should be repaid the original investment of eighty thousand dollars (\$80,000), and the victim received restitution of seventy-five thousand dollars (\$75,000) from the party ordered to pay restitution, then the net loss for the victim would be five thousand dollars (\$5,000). According to HEA 1332, the victim could apply to the Fund, and the Fund would pay the victim fifteen thousand dollars (\$15,000), because fifteen thousand dollars (\$15,000) is the lesser of twenty-five percent (25%) of the amount of restitution ordered (which was \$80,000) or fifteen thousand dollars (\$15,000). Even though the victim lost eighty thousand dollars (\$80,000) through the securities violations, strict application of the statute could lead to a return of ninety-five thousand dollars (\$95,000). This would provide the victim with amounts in excess of the original award, which does not seem to be the intent of the General Assembly and would seem to be an illogical result of the legislation.

Policy

When computing the amount of restitution to be paid from the Fund, the Securities Division shall use the victim's net loss (determined by subtracting the amount received from the party ordered to pay from the total restitution ordered to be paid) for the purposes of applying the twenty-five percent (25%) calculation. The Securities Division will then compare twenty-five percent (25%) of the net loss to fifteen thousand dollars (\$15,000) to pay out the proper amount under the Fund.

DATED at Indianapolis, Indiana, this 1ST day of JULY, 2010.



TODD ROKITA
SECRETARY OF STATE

CHRIS NAYLOR
SECURITIES COMMISSIONER